

THE PHILADELPHIA SPECIAL INVESTIGATION COMMISSION



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MARCH 6, 1986

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“The Commission is investigatory only, and shall find facts and prepare a report for the Mayor and the Citizens of Philadelphia concerning the operation of City government as it relates to the events giving rise to the incident of May 13, 1985, and may make suggestions for future handling of similar situations.”

— *Executive Order 5-85*
June 19, 1985

PHILADELPHIA SPECIAL INVESTIGATION COMMISSION

DISSENTING STATEMENT OF COMMISSIONER BRUCE W. KAUFFMAN

MARCH 6, 1986

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I. THE POLICE USE OF DEADLY FORCE

A majority of this Commission has concluded that the police gunfire on the MOVE house on May 13, 1985, was "clearly excessive and unreasonable," and that "[t]he failure of those responsible for the firing to control or stop such an excessive amount of force was unconscionable." (Finding #18) I strongly dissent.

No reasonable analysis of the police use of force on May 13 is possible without first considering the history of the MOVE organization and the circumstances that provoked the City to order 568 police officers to the scene at 6221 Osage Avenue on that day. This Commission has unanimously found:

That MOVE was an "authoritarian, violence-threatening cult . . . (whose members place[d] themselves above the laws . . . of society . . . [and] threatened violence to anyone who would attempt to enforce normal societal rules." (Finding #1 and Commentary).

That MOVE was an "armed and dangerous" group whose members "used threats, abuse and intimidation to terrify their neighbors and to bring about confrontation with City Government." (Finding #2).

That, "[t]he death of Officer Ramp and the wounding of many police and fire fighters in the 1978 clash confirmed that MOVE members would use deadly force when confronted." (Commentary to Finding #2).

That MOVE publicly acclaimed its 1978 murder of Police Officer James Ramp and made "the repeated threat that, if the police come to 6221 Osage Ave., 'we'll put a bullet in your motherfucking heads.' " (Commentary to Finding #2).

That MOVE "committed violent acts against [its] own neighbors and threatened violence against public officials and private citizens." (Commentary to Finding #2).

That MOVE terrorized its neighbors by an "aggressive display of a weapon." (Commentary to Finding #2).

That MOVE gave "public notice of imminent confrontation" by its construction of a rooftop bunker which gave MOVE "compelling domination of the neighborhood." (Commentary to Finding #2).

That MOVE plainly showed that the Mayor's "policy of appeasement, non-confrontation, and avoidance was doomed to fail" when MOVE began "barricading its house, including putting slats on all the windows." (Finding #6 and Commentary).

That MOVE members John Africa and Frank James "had become increasingly violent and intransigent" and that there was a "sense of desperation in the MOVE leadership." (Commentary to Finding #6).

That MOVE made its deadly intentions unmistakable when "[i]n May 1984, a hooded MOVE member appeared on the roof of 6221 Osage Ave. brandishing a shotgun." (Commentary to Finding #6).

That "the fortification of the rooftop . . . granted to the occupants of 6221 Osage Ave. a critical tactical advantage over the 6200 block of Osage Avenue and over the police." (Commentary to Finding #8).

That, "[d]uring the week preceding the confrontation, the Mayor, in meetings with top officials, discussed the fact that bloodshed, and even death, was likely." (Commentary to Finding #9).

The life-threatening task of confronting this terrorist group did not fall to social workers or politicians or lawyers. This dangerous duty was assigned to the police. With the luxury of hindsight, contemplation and analysis, and without a word of recognition for individual acts of police heroism, this Commission now presumes to second guess the actions taken under fire by those brave officers. This Commission criticizes both the caliber of the weapons the police carried and the number of bullets they fired. This, to me, is unconscionable.

The police did not precipitate this tragic confrontation. Nor did they make the decision to proceed despite the presence of innocent children in the house. They, at the risk of their very lives, simply acted under orders to enforce the law. The circumstances in which the police may use deadly force are clearly defined:

(1) A peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he believes to be necessary to effect the arrest and of any force which he believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using deadly force only when he believes that such force is necessary to prevent death or serious bodily injury to himself or such other person, or when he believes both that:

- (i) such force is necessary to prevent the arrest from being defeated by resistance or escape; and
- (ii) the person to be arrested has committed or attempted a forcible felony or is attempting to escape and possesses a deadly weapon, or otherwise indicates that he will endanger human life or inflict serious bodily injury unless arrested without delay.

18 Pa. C.S.A. §508(a)(1).

That the police were entitled to use deadly force on May 13 is manifest. They were attempting to serve lawfully executed warrants upon persons this Commission has found to be armed, dangerous, terroristic, and dedicated to provoking a violent confrontation with authority. When the police approached 6221 Osage, MOVE members announced over a loudspeaker that they would resist arrest with deadly force, that they would kill those who sought to enforce the law, and that they would not come out of the house. Immediately after smoke and gas shells were fired into 6221 Osage, MOVE opened fire on the police. There is no credible evidence that any adult MOVE member was prevented from leaving the house voluntarily. I believe that all those who thus resisted the police on May 13 were guilty of numerous crimes, including aggravated assault (18 Pa. C.S.A. §2702), attempted murder (§§901 *et seq.*, 2502 *et seq.*), riot (§5501), criminal conspiracy (§§903 *et seq.*), terroristic threats (§2706), resisting arrest (§5104), hindering apprehension (§5105), and a variety of weapons offenses (e.g., §§907, 908). Use of deadly force in these circumstances was lawful and appropriate.

The law makes clear that once ordered to serve the warrants, the police were under no obligation to retreat from resisting MOVE members. Any conclusion to the contrary would render law enforcement totally ineffective and invite similar terroristic acts in the future. Given the shots MOVE fired at police, its repeated threats of murdering police, and its prior violent history, no one can seriously question that the police had a reasonable and compelling need to defend themselves.

The legal question aside, this Commission's criticism is unwarranted for other reasons. The police learned a bitter and costly lesson in 1978, when MOVE murdered one officer and injured eight other police and fire personnel. Once the Mayor ordered police again to confront this armed and deadly terrorist organization in 1985, it would have been irresponsible not to take every reasonable precaution to ensure that the tragedy of 1978 was not repeated. As a result, the police rightfully sought to reduce their exposure to death or serious bodily injury. With their concentrated return of MOVE gunfire, the police successfully held the attention of those armed individuals firing from inside the heavily fortified house while other officers attempted to carry out their orders to dislodge MOVE from its fortress through the use of water and tear gas. That this plan was poorly conceived was *not* the fault of the rank and file police officers, virtually none of whom played any role in its formulation.¹ The police simply tried to make the best of this impossible situation imposed upon them by the City Administration, and this Commission has unjustly condemned them for that heroic effort.

Moreover, it is apparent that the police gunfire did not result in anyone's death, but, rather, prevented any police or fire personnel from getting killed. The City's Medical Examiner found that those who died were not killed by gunfire, but by smoke inhalation. This Commission's medical expert has testified that he cannot determine the causes of death with certainty, and, therefore, has not offered conclusive proof contradicting the Medical Examiner. Furthermore, Michael Ward testified that all the occupants of the house were alive when the bomb was dropped on the roof of 6221 at approximately 5:27 p.m. (N.T. 10/31/85 at 322). It is undisputed that virtually all police shooting took place long before that time.

I emphasize that this Commission has *not* found that the police were unjustified in the use of *any* deadly force. The majority simply concludes that 10,000 rounds were too many. While assuming the role of critic, the majority does not state how many rounds or what type of weapons would have been appropriate in the battlefield conditions MOVE had created. Would they have approved 5,000 rounds? 2,000? 500? Where would they, through hindsight, draw that arbitrary line? I refuse to join this criticism which is grossly unfair and unwarranted.

1. Of the 568 police officers assigned to 6221 Osage on May 13, only Sergeant Albert Revel and Officer Michael Tursi were at all involved in the plan's formulation.

II. THE EVENTS IN THE ALLEY AT 7:30 p.m.

The majority of this Commission has found that "[p]olice gunfire prevented some occupants of 6221 Osage Ave. from escaping from the burning house to the rear alley." (Finding #28). I disagree that the evidence supports such a conclusion.

Two sources supplied the Commission with first hand testimony regarding what transpired in the alley: the police in the alley, and Michael Ward. The police have testified consistently that after the bomb was dropped, they fired no shots in the alley, nor did they see or hear other police fire their weapons. Although they heard .22 caliber weapons fire, they believed these shots were fired by MOVE members. (See, e.g., testimony of Officer Louis Mount, Walter Washington, James Berghaier). Significantly, the noise from the raging fire was so great that some police officers said that they could not hear any shots. (See, e.g., testimony of Officers Terrance Mulvihill and Lawrence D'Ulisse, 10/31/85 at 30-47).

The police also testified consistently regarding surrender attempts of those inside the house. According to the police, there was only one such attempt. Although the officers' versions vary slightly, it appears that at approximately 7:30 p.m., they saw three children and an adult woman leaving the house. Closely following this group was an adult male with a rifle. He fired several shots at the police who did not return fire because of his proximity to the woman and children. (See testimony of Sergeants Donald Griffiths and William Trudell and Officer Marcus Bariana, 10/31/85 at 145-65). The evidence to the contrary is far from sufficient to convince me to disbelieve the police.²

Michael Ward testified that there were two escape attempts. During the first, Conrad Africa, carrying a child, allegedly was driven back in the house by police gunfire. Significantly, Michael did not actually see this surrender attempt. Rather, he remained inside 6221 and testified that he heard shots after Conrad attempted to leave. Moreover, Michael also testified that he had never heard gunshots before in his life and that he could not tell where the shots were coming from or who was firing them. (See testimony of Michael Ward, 10/31/85 at 323 *et seq.*).

Most significantly, both the police and Michael agreed that when he surrendered, neither he nor the others leaving the house with him were fired upon by anyone. (See testimony of Michael Ward, 10/31/85 at 365-66). This critical fact strongly corroborates the police version of the events in the alley.

Finally, the record clearly confirms that Officer James Berghaier exposed himself to gunfire and risked his life to save Michael from drowning after he fled from 6221. (See testimony of Officers James Berghaier and Michael Tursi, 11/1/85 at 107 *et seq.*). This heroic act is totally inconsistent with any police attempt to fire on those MOVE members and children who tried to surrender.

III. ALLEGED RACISM IN DECISION MAKING

Without a scintilla of factual support, the majority of this Commission has accused the Mayor, the former Managing Director, the former Police Commissioner, and the Fire Commissioner of racism. I fear that this unfounded accusation will prove needlessly divisive and will profoundly undermine the Commission's credibility.

I have joined with the majority in virtually all of their factual findings, abundantly supported by the evidence, relating to failures of leadership and errors of judgment. Although I deeply respect the sincerity of their beliefs, I cannot join the majority in this exceptionally inflammatory accusation based on nothing but surmise, conjecture, speculation, and suspicion. Mayor Goode may have his shortcomings, but I simply do not believe that he is a racist. Nor do I believe that race was a factor in any of the decisions that he made on or leading up to May 13. The same is true of former Managing Director Brooks, former Police Commissioner Sambor and Fire Commissioner Richmond.

On May 13, 1985, a black Mayor and a black Managing Director were responsible for the City's operation against a black terrorist group holding a black neighborhood hostage. The tragic events of that day were caused, purely and simply, by incompetence, bad judgment, and other errors. These inadequacies know no racial boundaries and, unfortunately, would have resulted in the same tragedy wherever the site of resistance may have been located.³ Any conclusion that the decisions of that day were

2. The Commission correctly notes that some police and fire personnel who were not actually in the alley testified that they thought they might have heard noises that sounded like automatic weapons fire coming from the alley. I do not find this testimony to be persuasive, especially since the fire itself created noises that sounded like gunshots.

3. Indeed, the site of the MOVE confrontation in 1978 was Powelton Village, a racially integrated neighborhood.

racially motivated is offensive, and I will have no part of it. This is particularly true when not a shred of evidence has been produced to substantiate any such extreme conclusion. Indeed, Councilman Lucien Blackwell, who represents the District in which 6221 Osage Avenue is located, testified before this Commission that he did not believe that the tragedy had racial overtones.

Q. [By Commissioner Kauffman] Councilman Blackwell, you made a statement that I think is very important to the entire perspective of our inquiry, and that is although you originally had a different belief you, at a point in time, came to the view that the problem with MOVE was not a racial problem.

Are you still of that view, sir?

A. [By Councilman Blackwell] Yes, sir.

Q. Thank you, sir.

(N.T. 10/22/85 at 112).

I have joined with the majority in condemning the decisions to allow the bunker to be built, to permit the dropping of the bomb, and to let the fire burn. I deplore racism in any form, and would also join with the majority's conclusion on that subject if it were supported by the evidence presented to this Commission. But there is *no* such evidence. The words "racism" and "bigotry" are too easily used today. The mere fact that a decision may adversely affect one ethnic group more than another does not, *per se*, mean the decision maker is a racist or a bigot. Yet, it is plain that the majority's conclusion that the decisions of the Mayor and his top aides were affected by race is based on nothing more than the fact that the MOVE confrontation tragically affected a black neighborhood. Accordingly, I feel compelled to express my emphatic disapproval of the majority's unsupported conclusion that these decisions would not have been made in the same way if the confrontation had occurred in a comparable white neighborhood.

INTRODUCTION

BACKGROUND

On May 13, 1985, years of tension and intermittent conflict between the City of Philadelphia and a small, urban cult known as MOVE ended in a violent day-long encounter between some of the group's members and the Philadelphia police.

The confrontation began at dawn, when there was resistance to attempts by the police to serve arrest warrants on four members of MOVE who were barricaded with the others inside a fortified row house at 6221 Osage Ave., in West Philadelphia.

Eighteen hours later, 11 occupants of the house, including five children, were dead. Nearly two square blocks of a residential neighborhood lay wasted by fire. Sixty-one families, some 250 men, women and children, were homeless.

It was one of the most devastating days in the modern history of this city.

THE COMMISSION

On May 22, 1985, the Philadelphia Special Investigation Commission was formed as a board of inquiry. Its members were appointed by the Mayor and directed to conduct a thorough, independent and impartial examination of the events leading up to and culminating in the death and destruction of May 13th.

The 11 commission members are citizens serving without pay. These citizens are:

William H. Brown III, Chairperson of the Commission, a member of the law firm of Schnader, Harrison, Segal & Lewis, and the former head of the Federal Equal Employment Opportunity Commission.

Charles W. Bowser, a member of the law firm of Pechner, Dorfman, Wolfe, Rounick and Cabot.

Rev. Audrey F. Bronson, founder and pastor of the Sanctuary Church of the Open Door.

Julia Chinn, a community activist and President of the Cobbs Creek Town Watch, a community organization in West Philadelphia.

M. Todd Cooke, vice chairman of PSFS Bank.

Rev. Msgr. Edward P. Cullen, director of Catholic Social Services for the Archdiocese of Philadelphia.

Bruce W. Kauffman, former justice of the Supreme Court of Pennsylvania, and chairman of the law firm of Dilworth, Paxson, Kalish & Kauffman.

Charisse Ranielle Lillie, on leave as professor of law at Villanova University, now serving as an Assistant U.S. Attorney in the Civil Division.

Henry S. Ruth, Jr., a member of the law firm of Saul, Ewing, Remick & Saul, and former Watergate Special Prosecutor in the U.S. Justice Department.

Rev. Paul Matthews Washington, rector of the Episcopal Church of the Advocate in Philadelphia.

Neil J. Welch, an attorney and former assistant director of the Federal Bureau of Investigation.

The Commission's authority was established in Executive Order No. 5-85, which was signed by the Mayor on June 19, 1985. This order provides as follows:

- "(1) That the Philadelphia Special Investigation Commission is established to conduct a thorough, independent, and impartial examination of the events leading up to and including the incident of May 13, 1985, in the neighborhood of 6221 Osage Avenue in Philadelphia, Pennsylvania.
- (2) The Commission shall inquire into the conduct of City employees in the planning and implementation of City government actions prior to and on May 13, 1985.
- (3) The Commission is authorized to conduct investigations, hold hearings and perform any other tasks related to the performance of its functions.
- (4) The Commission is hereby granted the right of access to the records of any officer, department, board, agency or commission of the City relating to the MOVE organization and the events of May 13, 1985.

- (5) The Commission shall have the authority vested in the Executive and Administrative branch of City government under the Philadelphia Home Rule Charter to compel the attendance and testimony of witnesses and the production of documents and other evidence relating to the incident of May 13, 1985; and, for that purpose, it may issue subpoenas requiring the attendance and testimony of persons and the production of documents and other evidence and cause them to be served in any part of the City.
- (6) All employees within the Executive and Administrative branch of City government are hereby directed to fully cooperate with the Commission by promptly producing documents, records, files and any other information that the Commission may request. In addition, these employees, on request of the Commission, shall be available to meet with, be interviewed by, and testify before the Commission during its hearings.
- (7) The Commission shall be provided whatever funding for staff and other resources reasonably necessary for the performance of its functions.
- (8) The Commission shall strive to complete its tasks in as expeditious a manner as possible.
- (9) The Commission is investigatory only, and shall find facts and prepare a report for the Mayor and the Citizens of Philadelphia concerning the operation of City government as it relates to the events giving rise to the incident of May 13, 1985, and may make suggestions for future handling of similar situations."

THE INVESTIGATION

The Commission's first meeting was on May 28, 1985. They have met 17 times in executive sessions ranging in length from three hours to eight hours.

The staff director and counsel is William B. Lytton, a former federal prosecutor and member of the law firm of Kohn, Savett, Marion & Graf. Deputy director and counsel is H. Graham McDonald, a former state prosecutor now associated with the law firm of Phillips and Phelan. Special counsel to the Commission is Carl E. Singley, Dean of the Temple University Law School.

The chief investigator was Neil P. Shanahan, a former FBI supervisor, a lawyer and a veteran of civil rights and bombing investigations. He was assisted by seven investigators with diverse backgrounds in law enforcement. They included former police officers from Washington, D.C., Chicago and Philadelphia, as well as former federal investigative agents. The investigative staff had a total of 194 years of law enforcement experience.

The Commission, with its members and staff, represents a broad range of business, civic, legal, religious, academic and law enforcement backgrounds. In addition, it has a specific background of judicial, prosecutive, defense and local and federal law enforcement experience to draw upon.

Through the summer and fall of 1985, the Commissioners provided direction and oversight to the investigative process. More than 900 in-depth interviews of major participants and witnesses were conducted, including fire and police personnel, city and public utility employees, residents of the Osage community, members and supporters of the MOVE organization and one of the two survivors of 6221 Osage Ave. Other current members of MOVE refused to testify or be interviewed. In addition, each of the principal decision makers and all of the significant policy implementers were interviewed one or more times.

The records of 36 government agencies were gathered and analyzed. Thousands of pages of documents were computer-coded into nearly 600 evidentiary categories. Dozens of audio and video tapes, the electronic record of May 13th, were screened for evidence.

Critical expertise was provided by highly qualified experts including a pathology team and fire and explosives specialists.

PUBLIC HEARINGS

On October 8, 1985, the Commission opened an extraordinary series of public hearings which explored every aspect of what happened on Osage Avenue. Over a five week period, 90 witnesses provided 144 hours of testimony which were public in the broadest possible sense — they were broadcast live by WHYY, public radio and television in Philadelphia.

The witnesses appearing before the Commission included:

- The Mayor of Philadelphia
- The former Managing Director
- The Police Commissioner
- The Fire Commissioner
- Members of the Mayor's Cabinet
- Police planners
- Police assigned to assault teams
- Firefighters
- Residents of the Osage neighborhood
- Citizen negotiators
- Former members of MOVE
- The only child to survive the fire
- Expert witnesses.

By the time the hearings concluded, the public had been presented with all the principal facts known to the Commission.

DELIBERATIONS

Early this year the Commission began prolonged deliberations, sifting through all the facts, weighing what its members had seen and heard, attempting to resolve the contradictions and discrepancies.

The group met in seven deliberative sessions. Every major relevant question was examined, every key issue explored. Strict standards of fairness and impartiality were followed as the group unanimously agreed on 66 of 68 findings, conclusions and recommendations. On the remaining two conclusions, ten of the 11 Commissioners agreed.

CHRONOLOGY

*This chronology is presented as a frame of reference
for the findings and conclusions which follow:*

- Early 1970s** The public and city administrations become aware of the emergence in Philadelphia of a small group of self-styled back-to-nature, anti-technology, anti-social advocates known as MOVE, and led by John Africa, also known as Vincent Leaphart.
- 1978**
August 8 A blockade by police of MOVE's headquarters in Powelton Village ends in a gunfight. Police Officer James Ramp is shot to death; four other police and four firefighters are wounded by gunfire.
- 1981**
August 4 Nine MOVE members are sentenced to prison terms of 30 to 100 years each for the killing of Officer Ramp.
- 1982-1983** MOVE adults and children take up residence at 6221 Osage Ave., the home of John Africa's sister, Louise James. In letters to public officials, in meetings and conversations with federal agents, and in a nighttime loudspeaker harangue, the occupants of 6221 Osage Ave. demand the release of their imprisoned colleagues, threaten various office holders, and state that they will kill any police officer who attempts to enter their house. Residents of the neighborhood unsuccessfully petition public officials for relief from MOVE's intrusion into their lives.
- 1984**
March 9 The Mayor is briefed by the Police Commissioner on MOVE's occupancy and fortification of 6221 Osage Ave.
- May 3** Man with a shotgun appears on the roof of 6221 Osage Ave.; police surround neighborhood, then withdraw. Mayor tells press conference: "We do not want to do anything that will cause an unnecessary confrontation."
- May 13-27** MOVE stages series of weekend loudspeaker addresses to the community, threatens public officials; neighborhood disrupted.
- May 28** Memorial Day; 15 residents of Osage Avenue meet for several hours with the Mayor and assert that MOVE is infringing upon their rights.
- May 30** The Mayor, Managing Director, Police Commissioner, City Solicitor and District Attorney meet with the U.S. Attorney, plus officials of the FBI and Secret Service, and are told that no grounds exist for federal action against MOVE. The U.S. Attorney cautions city officials not to violate the civil rights of the occupants of 6221 Osage Ave.
- Late May** The Police Commissioner gives Sgt. Kirk the sole responsibility of preparing a plan for the removal of the people from 6221 Osage Ave.
- June 22** The District Attorney advises the Mayor that legal grounds exist for the arrest of some of the occupants of 6221 Osage Ave.
- Late June** The Mayor decides not to take immediate action against MOVE, and waits to see what will occur on August 8, the anniversary of the 1978 Powelton Village shootout.
- July 4** Residents of Osage Avenue again meet with the Mayor, who tells them the city does not plan any aggressive action at this time.
- July 28** In a third meeting with MOVE's neighbors, the Mayor states that he will act when he decides it is appropriate.
- July 31** Louise James and Laverne Sims tell the Mayor that members of MOVE have become more violence-prone, and are prepared to use weapons against police.
- August 8** Police stand by in force, prepared to execute the Kirk Plan, as the sixth anniversary of the Powelton Village clash passes without incident.
- October 2** Police confirm a report by Osage Avenue residents that a "wooden shack" is being constructed on the roof of 6221 Osage Ave.

1985

- February-March** Neighbors form The United Residents of the 6200 Block of Osage Avenue to protest conditions in their neighborhood caused by MOVE's presence.
- April 25** 30 residents meet at the Cobbs Creek Community Center to object to harassment and threats by MOVE. Several men announce they will respond to MOVE "in kind."
- April 29** Spectators and police surveillance officers listen as MOVE members over loudspeakers threaten to kill the Mayor and police. Officers are told by a neighbor that men with a rifle have been seen inside the wooden structure on the rooftop of 6221 Osage Ave.
- April 30** The Police Commissioner initiates police planning for a confrontation.
- May 1** The United Residents hold a press conference and announce that they no longer can coexist with MOVE. They publicly ask the Governor for help.
- May 2** As reflected in a police memo, neighbors tell police that a five-gallon gasoline can was hoisted to the roof of 6221 Osage Ave. A news photograph corroborates this event.
- May 3** The Mayor concludes that an armed conflict between MOVE and the other residents of Osage Avenue is a probability. He asks the District Attorney to re-examine the legal justification for the city taking action against the people residing in 6221 Osage Ave.
- May 5** Police and prosecutors interview 19 residents to support applications for search and arrest warrants.
- May 7** The Mayor meets with the Managing Director, Police Commissioner and District Attorney, and authorizes the Police Commissioner to prepare and execute a tactical plan, under the supervision of the Managing Director.
- May 9** Managing Director leaves town. The Police Commissioner briefs the Mayor on the tactical plan. The Mayor approves the plan and authorizes its execution on the morning of May 13.
- May 11** A Court of Common Pleas judge approves search and arrest warrants. The Police Commissioner briefs the Mayor on the plan.
- May 12** Police evacuate the Osage Avenue neighborhood. MOVE members tell citizen intervenors that they will not send the children out of the house and they are prepared for a confrontation. The Managing Director returns to Philadelphia in the evening. At about 9 P.M., in the presence of the Police Commissioner, he briefs the Mayor by telephone concerning the plan.
- May 13**
- 3:00 A.M.** Bomb Disposal and Stakeout Units report to staging area in parking lot behind the command center at Walnut Park Plaza.
- 3:40 A.M.** Police Commissioner and tactical planners hold general briefing inside the command center.
- 3:45-4:00 A.M.** Utility crews cut off gas and electricity to 6200 block of Osage Avenue.
- 4:05 A.M.** Fire Department high pressure water hoses on remote controlled booms, known as "Sqrts," are positioned on Pine Street, the block behind the MOVE house.
- 5:35 A.M.** Police Commissioner, using a bullhorn from inside a house on Osage Avenue, announces that four persons inside 6221 Osage Ave. are named in arrest warrants and have 15 minutes to surrender. A man and a women, responding over MOVE's loudspeaker, reject the ultimatum.
- 5:50 A.M.** Water is trained on the MOVE rooftop. Police guns fire tear gas and smoke projectiles at the front and rear of the MOVE house, to provide cover for police insertion teams.
- 5:53-6:00 A.M.** Insertion teams enter houses at 6217 and 6223 Osage Ave.
- 6:00 A.M.** First shots fired at police from MOVE house. At least 10,000 rounds of ammunition are fired by police in the next 90 minutes.
- 6:15 A.M.** Police commanders at scene order delivery of more ammunition from the Police Academy.

6:18 A.M. First explosions heard as insertion teams begin detonating charges to blow holes in the walls of 6221 Osage Ave.

6:51 A.M. Sharp explosion, followed by heavy gunfire.

7:06 A.M. Newly-deployed gas and smoke are dense on Osage Avenue.

7:30 A.M. Heavy gunfire ends.

7:30-10:30 A.M. Insertion teams use explosives in houses on both sides of 6221 Osage Ave. Fronts of 6219 and 6217 Osage Ave. are heavily damaged.

10:40 A.M. "A" Team sets off the last explosion; it blows out the fronts of 6223 and 6221 Osage Ave.

12:30 P.M. The use of explosives and tear gas have failed to force the occupants out of 6221 Osage Ave. Insertion teams withdraw from Osage Avenue, regroup in Cobbs Creek Park.

1:30 P.M. The Managing Director, Fire Commissioner and the commissioners of Licenses and Inspections and Health are escorted into Police Post 1 by the Police Commissioner. They observe the damage to the front of the houses across the street.

3:45 P.M. The Mayor tells a televised press conference that he intends to "seize control of the house . . . by any means necessary."
(approx.)

4:00 P.M. The Police Commissioner and Managing Director discard as unworkable the idea of using a construction crane to dislodge the bunker. Explosives are discussed.

4:15-4:40 P.M. A citizens' group, using bullhorns, pleads with those inside 6221 Osage Ave. to surrender. There is no response.

4:30-4:40 P.M. The Police Commissioner, in the presence of the Managing Director, instructs the head of the Bomb Disposal Unit to assemble an explosive package to be dropped on the roof of the MOVE house from a State Police helicopter in the hope of dislodging the bunker.

4:45 P.M. The Managing Director advises the Mayor that the citizens' mediation effort was unsuccessful.

5:00 P.M. The Mayor, in a telephone conversation with the Managing Director, approves the use of explosives on the roof of 6221 Osage Ave.

5:15 P.M. Stakeout units evacuate their positions surrounding the MOVE house.

5:27 P.M. The bomb is dropped and the bunker is not dislodged.

5:35 P.M. Two men and one woman are observed inside the front porch of 6221 Osage Ave. Stakeout units return to their positions.

5:49 P.M. The head of the Bomb Disposal Unit, in a helicopter, reports seeing flames on the roof.

6:08-6:12 P.M. In a two minute conversation, the Police Commissioner and the Fire Commissioner confer and decide to let the bunker burn.
(approx.)

6:14 P.M. Police in a post located diagonally across from 6221 Osage Ave. see a man and a woman inside the first floor.

6:20-6:25 P.M. The bunker falls through the roof into the second floor.

6:32 P.M. The Fire Department "Sqrts" on Pine Street are turned on the fire for the first time.

6:54 P.M. The first fire alarm is sounded.

7:00-7:35 P.M. Gunfire reported in the alley behind the MOVE house.

7:30 P.M. Post 4's sergeant reports on the radio that one female, three children and one male, "firing," had come out the rear of 6221 Osage Ave.

7:35 P.M. Stakeout officers in the alley take into custody a woman and a child.

9:30 P.M. Firefighters begin fighting the fire in a conventional manner for the first time.

9:34 P.M. The sixth alarm is sounded.

11:41 P.M. The Fire Commissioner declares the fire under control.

FINDINGS AND CONCLUSIONS

SUMMARY OF FINDINGS AND CONCLUSIONS

- 1 By The Early 1980s MOVE Had Evolved Into An Authoritarian, Violence-Threatening Cult.
- 2 The Residents Of 6221 Osage Ave. Were Armed And Dangerous, And Used Threats, Abuse And Intimidation To Terrify Their Neighbors And To Bring About Confrontation With City Government.
- 3 Mayor Goode's Policy Toward MOVE Was One Of Appeasement, Non-Confrontation And Avoidance.
- 4 The Managing Director And The City's Department Heads Failed To Take Any Effective Action On Their Own And, In Fact, Ordered Their Subordinates To Refrain From Taking Action To Deal Meaningfully With The Problem On Osage Avenue.
- 5 The City Administration Discounted Negotiation As A Method Of Resolving The Problem. Any Attempted Negotiations Were Haphazard And Uncoordinated.
- 6 In The First Several Months Of His Administration, The Mayor Was Presented With Compelling Evidence That His Policy Of Appeasement, Non-Confrontation And Avoidance Was Doomed To Fail.
- 7 In The Summer Of 1984, The Mayor Was Told That The Legal Basis Existed At That Time To Act Against Certain MOVE Members. Yet, The Mayor Held Back, And Continued To Follow His Policy Of Avoidance And Non-Confrontation.
- 8 From The Fall Of 1984 To The Spring Of 1985, The City's Policy Of Appeasement Conceded To The Residents Of 6221 Osage Ave. The Continued Right To Exist Above The Law.
- 9 More Than Any Other Factor, Intensified Pressure From The Residents Of Osage Avenue Forced The Mayor To Abandon His Policy Of Non-Confrontation And Avoidance, And To Devise A Strategy For Resolving The Problem Quickly.
- 10 The Mayor Instructed The Police Commissioner To Prepare And Execute A Tactical Plan, Under The Supervision Of The Managing Director. The Managing Director Failed In That Responsibility, And The Mayor Allowed The Police Commissioner To Proceed On His Own.
- 11 The Police Commissioner Chose As His Planners The Head Of The Bomb Disposal Unit, A Sergeant From The Pistol Range And An Uniform Patrolman. In So Doing, He Excluded From The Formulation Of The Plan The Entire Police Department Command Structure And Other Available Expertise.
- 12 As A Result Of The Police Commissioner's Orders, The Three Officers Responsible For Developing The Tactical Plan Did So Hastily And Without Sufficient Information Or Adequate Intelligence. The Mayor, The Managing Director And The Police Commissioner Neither Sought Nor Received From These Men A Written Tactical Plan.
- 13 The Mayor, The Managing Director And The Police Commissioner Specifically Approved The Use Of Explosives To Blow 3-Inch Holes In The Party Walls Of 6221 Osage Ave. To Allow The Insertion Of Tear Gas To Induce The Evacuation Of The House. This Plan Was Inadequate Because Of The Flawed Intelligence On Which It Was Based And The Haste With Which It Was Designed.
- 14 Directives To Remove The Children From 6221 Osage Ave. Were Unclear, Poorly Communicated And Were Not Carried Out.
- 15 The Mayor's Failure To Call A Halt To The Operation On May 12th, When He Knew That Children Were In The House, Was Grossly Negligent And Clearly Risked The Lives Of Those Children.
- 16 The Managing Director And The Police Commissioner Were Grossly Negligent And Clearly Risked The Lives Of The Children By Failing To Take Effective Steps To Detain Them And By Not Forcefully Recommending To The Mayor That The Operation Be Halted When They Knew, The Evening Of May 12th, That The Children Were In The Residence.
- 17 The Mayor Failed To Perform His Responsibility As The City's Chief Executive By Not Actively Participating In The Preparation, Review And Oversight Of The Plan.

- 18 The Firing Of Over 10,000 Rounds Of Ammunition In Under 90 Minutes At A Row House Containing Children Was Clearly Excessive And Unreasonable. The Failure Of Those Responsible For The Firing To Control Or Stop Such An Excessive Amount Of Force Was Unconscionable.*
- 19 The Members Of The Bomb Disposal Unit Were Not Trained For Their Tactical Assignment. Their Actions On The Morning Of May 13th Posed A High Risk Of Death For Both The Police And The Occupants of 6621 Osage Ave.
- 20 Explosives Were Used Against The MOVE House On The Morning Of May 13, 1985, Which Were Excessive And Life-Threatening.
- 21 At Least One Agent Of The Philadelphia Office Of The FBI Made Available To The Philadelphia Police Department, Without Proper Recordation By Either Agency, Substantial Quantities Of C-4, Some Of Which May Have Been Incorporated In The Explosive Devices Used On May 13, 1985.
- 22 The Mayor Abdicated His Responsibilities As A Leader When, After Mid-Day, He Permitted A Clearly Failed Operation To Continue Which Posed Great Risk To Life And Property.
- 23 On May 13th, The Key Decision Makers Were Prevented From Easily And Directly Contacting Each Other Because Of An Inadequate Communications System.
- 24 The Plan To Bomb The MOVE House Was Reckless, Ill-Conceived And Hastily Approved. Dropping A Bomb On An Occupied Row House Was Unconscionable And Should Have Been Rejected Out-Of-Hand By The Mayor, The Managing Director, The Police Commissioner And The Fire Commissioner.
- 25 The Fire Which Destroyed The Osage Avenue Neighborhood Was Caused By The Bomb Which Exploded On The Roof Of The MOVE House. The Fire Began A Millisecond After The Bomb Blast When Friction-Heated Metal Fragments Penetrated A Gas Can On The Roof And Ignited Gasoline Vapors.
- 26 Even After The Bomb Exploded And Ignited The Fire, Life And Property Could Have Been Saved Without Endangering Any Of The Police Officers Or Firefighters By Using The "Sqrts" To Extinguish The Fire On The Roof While The Fire Was In Its Incipient Stage.
- 27 The Hasty, Reckless And Irresponsible Decision By The Police Commissioner And The Fire Commissioner To Use The Fire As A Tactical Weapon Was Unconscionable.
- 28 Police Gunfire Prevented Some Occupants Of 6221 Osage Ave. From Escaping From The Burning House To The Rear Alley.*
- 29 Five Children Were Killed During The Confrontation On May 13, 1985. Their Deaths Appear To Be Unjustified Homicides Which Should Be Investigated By A Grand Jury.
- 30 Six Adults Also Died As A Result Of The May 13th Confrontation.
- 31 The Performance Of The Medical Examiner's Office Was Unprofessional And Violated Generally Accepted Practices For Pathologists.

**Commissioner Kauffman dissents from this finding.*

1 BY THE EARLY 1980s MOVE HAD EVOLVED INTO AN AUTHORITARIAN, VIOLENCE-THREATENING CULT.

- John Africa and his followers in the 1980s came to reject and to place themselves above the laws, customs and social contracts of society. They threatened violence to anyone who would attempt to enforce normal societal rules. They believed that only the laws of John Africa need be obeyed.
- The members of MOVE saw themselves as the targets of persistent harassment by regulatory agencies, unjust treatment by the courts, and periodic violent attempts to be suppressed by the police.
- John Africa and his followers believed that a catastrophic confrontation with "the system" was necessary, if not inevitable, because of the campaign by "the system" to force MOVE to conform to society's rules.
- MOVE's last campaign for confrontation began in the fall of 1983, and was predicated on (1) the unconditional demand that all imprisoned MOVE members be released; and (2) that harassment of MOVE by city officials cease. The stridency and extremism of individual MOVE members escalated during the first years of the Goode Administration.

2 THE RESIDENTS OF 6221 OSAGE AVE. WERE ARMED AND DANGEROUS, AND USED THREATS, ABUSE AND INTIMIDATION TO TERRIFY THEIR NEIGHBORS AND TO BRING ABOUT CONFRONTATION WITH CITY GOVERNMENT.

- The death of Officer Ramp and the wounding of many police and firefighters in the 1978 clash confirmed that MOVE members would use deadly force when confronted.
- On Osage Avenue, the occupants of 6221 Osage Ave. committed violent acts against their own neighbors and threatened violence against public officials and private citizens in a manner which was intended to shock and intimidate both the general population and the city's officials.
- MOVE's deliberate use of terror included the intentional violation of the basic rights of those living in the Osage Avenue neighborhood. This was achieved by:
 - ✓ Both verbal and physical assaults upon targeted individuals living in the neighborhood.
 - ✓ The periodic broadcast over outdoor loudspeakers of profane harangues against the government and threats of violence against public officials.
 - ✓ The public acclaiming by MOVE of the 1978 death of Officer Ramp, and the repeated threat that, if the police come to 6221 Osage Ave., "we'll put a bullet in your motherfucking heads."
 - ✓ The prominent fortification of an ordinary row house.
 - ✓ The aggressive display of a weapon by a hooded man at mid-day in a normally peaceful neighborhood.
 - ✓ The compelling domination of the neighborhood by MOVE's rooftop bunker, which, by itself, became a commanding public notice of imminent confrontation.
- Through this use of terror, MOVE, in some respects, held Osage Avenue "hostage" for nearly two years. During that period, the city's leadership chose not to secure the neighborhood's release, and, instead, drifted toward the confrontation that MOVE had declared was preordained.

3 MAYOR GOODE'S POLICY TOWARD MOVE WAS ONE OF APPEASEMENT, NON-CONFRONTATION AND AVOIDANCE.

- The Goode Administration assumed that any attempt to enforce the law would end in violence. MOVE-related issues thus became "too hot to handle," and the Administration pursued a do-nothing and say-nothing policy. Avoidance of the problem was so pervasive that city officials did not even discuss the issue among themselves.
- The Mayor attempted to mollify neighbors with claims that a proper legal basis for action was being sought, and with superficial actions that were designed to diffuse neighborhood frustrations without addressing the crux of the problem.
- With this policy of benign avoidance, the Mayor hoped that the problem might dissipate on its own, particularly, that MOVE would weary of unanswered challenges, modulate their confrontational behavior and/or relocate. To a great extent, then, MOVE effectively paralyzed the normal functioning of city government, as it applied to MOVE and to the Osage neighborhood.

4 THE MANAGING DIRECTOR AND THE CITY'S DEPARTMENT HEADS FAILED TO TAKE ANY EFFECTIVE ACTION ON THEIR OWN AND, IN FACT, ORDERED THEIR SUBORDINATES TO REFRAIN FROM TAKING ACTION TO DEAL MEANINGFULLY WITH THE PROBLEM ON OSAGE AVENUE.

- As early as March, 1984, the Mayor treated the problem on Osage Avenue as a "police matter."
- The Mayor assigned the responsibility of monitoring the problem to the Managing Director who was to be his "eyes on things out there through the police department."
- In May of 1984, Managing Director Brooks instructed his task force (established to coordinate and focus the city's programs related to neighborhood problems) that "MOVE is not an issue for this group, it is a police matter."
- The Osage Avenue situation was never raised prior to May 13th in any of the weekly commissioner meetings during the Goode Administration. The Commissioners of Licenses and Inspections, Human Services, Water and Health each adopted, without question, this "hands off" attitude. Not a single city commissioner ever questioned the Mayor or the Managing Director about the rationale for this policy.

5 THE CITY ADMINISTRATION DISCOUNTED NEGOTIATION AS A METHOD OF RESOLVING THE PROBLEM. ANY ATTEMPTED NEGOTIATIONS WERE HAPHAZARD AND UNCOORDINATED.

- The city's experience with MOVE in 1978, and MOVE's insistence on making release of its members from jail the sole basis for negotiation in 1985, promoted a view that rational discussion and compromise were impossible. Because the situation was believed to be inherently volatile, with no hope of acceptable compromise, it was thought that active negotiation would accelerate rather than postpone an ultimate confrontation.
- All occasions on which the Mayor met with MOVE were instigated by MOVE members or sympathizers and were held for the sole purpose of airing MOVE's grievances. The Mayor's posture was to listen, but not act.
- Formal and informal city groups chartered to deal with these kinds of problems were rebuffed and discouraged by the Administration from mediating or otherwise offering their services.
- Into this vacuum stepped a number of community mediators with no active mandate from the city administration.

6 IN THE FIRST SEVERAL MONTHS OF HIS ADMINISTRATION, THE MAYOR WAS PRESENTED WITH COMPELLING EVIDENCE THAT HIS POLICY OF APPEASEMENT, NON-CONFRONTATION AND AVOIDANCE WAS DOOMED TO FAIL.

- In March of 1984, the Mayor and the Managing Director were briefed thoroughly by the Police Commissioner and told the following:
 - ✓ That, since late summer, 1983, the alley behind the MOVE house was blocked by fencing.
 - ✓ That MOVE was barricading its house, including putting slats on all the windows.
 - ✓ That a bullhorn had been affixed to the front of the home and was being used to harangue and threaten the neighbors.
 - ✓ That construction material was visible on the roof.
 - ✓ That, since Christmas, 1983, MOVE had been in a self-proclaimed confrontation with the city.
- In May, 1984, a hooded MOVE member appeared on the roof of 6221 Osage Ave. brandishing a shotgun.
- On Memorial Day and the Fourth of July, 1984, the Mayor met with Osage neighbors who gave him a detailed and emotional report of the difficulties of living on Osage Avenue and told him the city's response was inadequate.
- In the summer of 1984, the Mayor met with Louise James and learned that John Africa and Frank James had become increasingly violent and intransigent. She told the Mayor that the failures of MOVE to obtain the release from prison of its members had provoked a sense of desperation in the MOVE leadership.

7 IN THE SUMMER OF 1984, THE MAYOR WAS TOLD THAT THE LEGAL BASIS EXISTED AT THAT TIME TO ACT AGAINST CERTAIN MOVE MEMBERS. YET, THE MAYOR HELD BACK, AND CONTINUED TO FOLLOW HIS POLICY OF AVOIDANCE AND NON-CONFRONTATION.

- The Mayor requested and was provided in July, 1984, with a detailed analysis of the possible legal grounds for taking action against some of the occupants of 6221 Osage Ave.
- The Mayor was also informed that delay in acting would cause the problem to grow worse, providing MOVE with the opportunity to become better fortified, attracting media attention to the area and provoking greater tension among the neighbors.
- The Mayor and the police believed that MOVE would provoke a violent confrontation on August 8, 1984. The police, at the Mayor's direction, were prepared that day to execute a "reactive" plan designed to remove the occupants of 6221 Osage Ave. from the house, thereby eliminating MOVE's presence in the community.
- The confrontation never took place, and the Mayor believed the threat posed by MOVE had eased. He took no further action, nor was any recommended to him by either the Police Commissioner or the District Attorney, until April, 1985.

8 FROM THE FALL OF 1984, TO THE SPRING OF 1985, THE CITY'S POLICY OF APPEASEMENT CONCEDED TO THE RESIDENTS OF 6221 OSAGE AVE. THE CONTINUED RIGHT TO EXIST ABOVE THE LAW.

- The construction of the rooftop bunker in October, 1984, was unchallenged by the Department of Licenses and Inspections, despite the obvious violation of city building codes. By permitting the fortification of the rooftop, the city granted to the occupants of 6221 Osage Ave. a critical tactical advantage over the 6200 block of Osage Avenue and over the police.
- Other areas of deliberate, selective non-enforcement of the law by government included:
 - ✓ The alley behind the 6200 block of Osage Avenue remained blockaded by fencing erected by MOVE. Neither Licenses and Inspections nor the Streets Department ever accepted jurisdiction over the obstructing of this public alleyway.
 - ✓ Unpaid water, gas and electric bills were allowed to accumulate without service being interrupted as police refused to provide assistance to meter readers and revenue collectors.
 - ✓ The children of MOVE adults remained out of school in flagrant violation of truancy laws.
 - ✓ The Health Department refused to act on continuing complaints from the neighborhood of insects, rats, open garbage and animals running loose at 6221 Osage Ave.
- The policy of appeasement produced a rule of silence in City Hall, where information on the Osage Avenue situation was not disseminated and where city officials knowledgeable about the problems chose not to speak of them.

9 MORE THAN ANY OTHER FACTOR, INTENSIFIED PRESSURE FROM THE RESIDENTS OF OSAGE AVENUE FORCED THE MAYOR TO ABANDON HIS POLICY OF NON-CONFRONTATION AND AVOIDANCE, AND TO DEVISE A STRATEGY FOR RESOLVING THE PROBLEM QUICKLY.

- By the end of April, 1985, the Osage Avenue neighbors were so intimidated by MOVE's increasing belligerence and so frustrated by the city's inaction that they sought help from outside, appealing to the Governor and expressing their grievances to the media.
- The Mayor and the police responded to this new pressure, and, in the first week of May, began to design a strategy of action. This strategy relied on the same legal basis that existed in June, 1984, but which had not been acted upon.
- This strategy, formulated by the Mayor, had three components:
 - a) To arrest as many MOVE members as possible on minor criminal charges, some pre-existing, some new.
 - b) To remove, during the arrest process, all the inhabitants from 6221 Osage Ave., including non-criminal violators and children.
 - c) To prevent MOVE members from reoccupying the house.
- The City Solicitor and her Deputy suspected that outright seizure of the MOVE house after the arrests were made would be illegal. As a result, the City Solicitor was prepared for the city to be sued if this action was carried out.
- The Mayor held little hope that MOVE would vacate the house voluntarily or even permit a court-ordered search of the premises. The Mayor's strategy, accordingly, presupposed the use of police force. During the week preceding the confrontation, the Mayor, in meetings with top officials, discussed the fact that bloodshed, and even death, were likely.

10 THE MAYOR INSTRUCTED THE POLICE COMMISSIONER TO PREPARE AND EXECUTE A TACTICAL PLAN, UNDER THE SUPERVISION OF THE MANAGING DIRECTOR. THE MANAGING DIRECTOR FAILED IN THAT RESPONSIBILITY, AND THE MAYOR ALLOWED THE POLICE COMMISSIONER TO PROCEED ON HIS OWN.

- On Tuesday, May 7, 1985, the Mayor, in a meeting with the city's highest legal and law enforcement officials, directed the Police Commissioner to prepare and carry out a tactical police operation against 6221 Osage Ave.
- At that meeting the Mayor explicitly gave the Managing Director supervisory responsibility for the development of the police plan. He was ordered to keep informed of the planning process, to evaluate the plan's viability and to report to the Mayor.
- The Managing Director, however, did nothing. He was not in his office on May 8th, and left town on personal business on May 9th. He did not return to the city until the night of Sunday, May 12, at which time the Osage neighborhood had been evacuated, in anticipation of the next morning's action.
- The Police Commissioner neither sought out the absent Managing Director, nor did he believe he was required to do so. In the meantime, he proceeded through the final stages of preparation with complete independence, though he twice advised the Mayor of his department's progress during that weekend.

11 THE POLICE COMMISSIONER CHOSE AS HIS PLANNERS THE HEAD OF THE BOMB DISPOSAL UNIT, A SERGEANT FROM THE PISTOL RANGE AND AN UNIFORM PATROLMAN. IN SO DOING, HE EXCLUDED FROM THE FORMULATION OF THE PLAN THE ENTIRE POLICE DEPARTMENT COMMAND STRUCTURE AND OTHER AVAILABLE EXPERTISE.

- The decision to entrust an undertaking of this magnitude and delicacy to first line operation supervisors and uniform patrolmen was irresponsible. As a result, the operation was deprived of a breadth of practical knowledge and technical expertise at a critical stage of the planning process.
- The planners designated by the Police Commissioner lacked sufficient knowledge and technical background to evaluate properly various alternatives to the operation. The central role played by the head of the bomb squad invited the operation's reliance on explosives.
- No serious effort was made by the Police Commissioner or his planners to explore alternative solutions or tactics with outside agencies or experts. Contacts with the FBI and the U.S. Treasury Department were cursory; no official attempt was made to draw on the resources of these agencies.
- Other city agencies possessing specialized knowledge of MOVE and 6221 Osage Ave. were not consulted by the planners, nor were their views sought.

12 AS A RESULT OF THE POLICE COMMISSIONER'S ORDERS, THE THREE OFFICERS RESPONSIBLE FOR DEVELOPING THE TACTICAL PLAN DID SO HASTILY AND WITHOUT SUFFICIENT INFORMATION OR ADEQUATE INTELLIGENCE. THE MAYOR, THE MANAGING DIRECTOR AND THE POLICE COMMISSIONER NEITHER SOUGHT NOR RECEIVED FROM THESE MEN A WRITTEN TACTICAL PLAN.

- A critique of the 1978 confrontation, which had been prepared by the Police Department's highest ranking officers, was never reviewed by the 1985 planners.
- Despite the city's experience with MOVE in 1978, and despite the resurgence of MOVE on Osage Avenue in the early 1980s, the police did nothing to establish the means for the systematic collection, analysis and dissemination of intelligence information regarding MOVE and its members.
- Much of the intelligence which was acted upon by the planners was insufficient, inaccurate or misleading. For example:
 - ✓ The extent of the house's interior fortification was underestimated.
 - ✓ Police believed MOVE was prepared to escape through tunnels carved out under the neighborhood. None existed.
 - ✓ Gasoline was known to the Mayor and some officers to be stored on the roof of 6221 Osage Ave. The planners did not know this.
- Though a 24-hour surveillance on the MOVE house was warranted by April 30, 1985, none began until late on the afternoon of May 9th.
- The Police Commissioner never passed on to the planners the Mayor's direction to him to "take his time" in devising the tactical plan. Instead, the planners operated on a crash basis.
- Months after the assault, the pistol range sergeant produced a two-page undated document he claimed was the written tactical plan. He said it was available to his superiors prior to May 13th. The police commanders, up to and including the Commissioner, as well as the Mayor and the Managing Director, said they never received such a written plan, nor did they ask for one. There is no evidence to corroborate the sergeant's statement that a written plan existed before May 13th.

13 THE MAYOR, THE MANAGING DIRECTOR AND THE POLICE COMMISSIONER SPECIFICALLY APPROVED THE USE OF EXPLOSIVES TO BLOW 3-INCH HOLES IN THE PARTY WALLS OF 6221 OSAGE AVE. TO ALLOW THE INSERTION OF TEAR GAS TO INDUCE THE EVACUATION OF THE HOUSE. THIS PLAN WAS INADEQUATE BECAUSE OF THE FLAWED INTELLIGENCE ON WHICH IT WAS BASED AND THE HASTE WITH WHICH IT WAS DESIGNED.

- The Mayor was told in advance by the Managing Director and by the Police Commissioner that the walls would be breached by explosives.
- The unanticipated fortification inside the first floor of 6221 Osage Ave. gave the house's occupants a protected firebase. Fire from this position forced "B" Team to concentrate on neutralizing the interior bunker instead of forcing tear gas into the house. This diversion in itself made the police plan inoperative.
- The plan also relied on water from the Fire Department's "Squirt guns" to dislodge the rooftop bunker, despite warnings by fire officials that the "Squirts" were incapable of performing that task.
- No alternative method of removing the bunker was seriously considered by the planners. The use of a crane was dismissed by the head of the bomb squad, whose decision was accepted without question by the Police Commissioner.
- Police and fire mobile communications systems were incompatible, yet no consideration was given to coordinating the communication between police and firefighters during this complicated and life-threatening operation.
- The plan failed to utilize the police department's professional negotiating expertise available and trained for barricaded persons and hostage situations.
- There was no back-up plan if the explosives and tear gas failed to drive the occupants from the house. The police planned no alternative to the assault's failure.

- 14 DIRECTIVES TO REMOVE THE CHILDREN FROM 6221 OSAGE AVE. WERE UNCLEAR, POORLY COMMUNICATED AND WERE NOT CARRIED OUT.**
- The Mayor should not have permitted the planning to go forward when, on May 9th, he knew that the Managing Director was out of town.
 - The Managing Director was instructed by the Mayor on May 7, 1985, to coordinate the efforts of the Police Department, the Department of Human Services and the Law Department to ensure that the children were removed from the house prior to the implementation of the plan. He took no action whatsoever toward achieving this, and left town the next day without even advising his staff on how to proceed.
 - The Human Services Commissioner first learned of the city's interest in protecting the children four days prior to the confrontation. She responded with little interest or vigor and did not demand any information from the police regarding the protection of the children.
 - On the evening of May 9th, the City Solicitor's office gave the Police Commissioner specific instructions to take the children from 6221 Osage Ave. into protective custody at the first opportunity. Nevertheless, the City Solicitor's office did not attempt to secure the legal authority to remove and detain the children until the morning of the confrontation, when it was too late.
 - Police personnel responsible for carrying out the directive had conflicting impressions about when they were to detain the children, where the children could safely be retrieved, and which children were subject to the directive.
- 15 THE MAYOR'S FAILURE TO CALL A HALT TO THE OPERATION ON MAY 12TH, WHEN HE KNEW THAT CHILDREN WERE IN THE HOUSE, WAS GROSSLY NEGLIGENT AND CLEARLY RISKED THE LIVES OF THOSE CHILDREN.**
- On Saturday, May 11, and Sunday, May 12, the Mayor was briefed on the plan by the Police Commissioner and was aware that children were known to be inside the MOVE residence. Nonetheless, he authorized the commencement of the operation.
 - No children were taken into protective custody. At least two children, who were passengers in a car, were allowed to pass through a police barricade on the day before the evacuation of the neighborhood, with no attempt made to detain them.
- 16 THE MANAGING DIRECTOR AND THE POLICE COMMISSIONER WERE GROSSLY NEGLIGENT AND CLEARLY RISKED THE LIVES OF THE CHILDREN BY FAILING TO TAKE EFFECTIVE STEPS TO DETAIN THEM AND BY NOT FORCEFULLY RECOMMENDING TO THE MAYOR THAT THE OPERATION BE HALTED WHEN THEY KNEW, THE EVENING OF MAY 12TH, THAT THE CHILDREN WERE IN THE RESIDENCE.**
- The Managing Director and Police Commissioner knew, the evening of May 12th, that the Mayor's order to secure the safety of the children had not and could not be accomplished before the start of the operation. These men were obligated either to tell the Mayor that the plan should not proceed, or to order a halt to the operation themselves.
- 17 THE MAYOR FAILED TO PERFORM HIS RESPONSIBILITY AS THE CITY'S CHIEF EXECUTIVE BY NOT ACTIVELY PARTICIPATING IN THE PREPARATION, REVIEW AND OVERSIGHT OF THE PLAN.**
- At a meeting on May 7th, the Mayor rebuffed a suggestion that he be fully briefed on the plan, preferring instead to isolate himself by leaving that level of detail to his experts.
 - The Mayor's statement that he was reluctant to "meddle" in the affairs of his subordinates in this instance represents a striking departure from his self-proclaimed hands-on method of city management.

18 THE FIRING OF OVER 10,000 ROUNDS OF AMMUNITION IN UNDER 90 MINUTES AT A ROW HOUSE CONTAINING CHILDREN WAS CLEARLY EXCESSIVE AND UNREASONABLE. THE FAILURE OF THOSE RESPONSIBLE FOR THE FIRING TO CONTROL OR STOP SUCH AN EXCESSIVE AMOUNT OF FORCE WAS UNCONSCIONABLE.*

- So great was the latitude given the police planners that they were allowed to augment the department's arsenal with military weapons and explosives not normally available to municipal police departments.
- In a period of about 90 minutes during the morning hours, the police fired at least 10,000 rounds at 6221 Osage Ave.
- Thirty-two police officers admitted to firing their weapons. One shooter acknowledged that, from his post within 50 feet of the house, he fired 1,000 rounds from his M-16 semi-automatic rifle.
- Other weapons fired included M-16's, a Browning Automatic Rifle, a Thompson submachine gun, 30.06 and .22-250 sharpshooter rifles, two M-60 machine guns, Uzis, shotguns and a silenced .22 caliber rifle.
- Found in the ruins of the MOVE house were two pistols, a shotgun and a .22 caliber rifle.
- The excessive gunfire was inappropriate to the force generated by MOVE, and needlessly jeopardized the lives of the children in the house. It also placed in serious danger the lives of police officers in Posts 1, 2, 3, and 4, and Insertion Teams "A" and "B" immediately adjacent to the MOVE residence, as well as the several hundred police and civilians who were on the Osage perimeter.

19 THE MEMBERS OF THE BOMB DISPOSAL UNIT WERE NOT TRAINED FOR THEIR TACTICAL ASSIGNMENT. THEIR ACTIONS ON THE MORNING OF MAY 13TH POSED A HIGH RISK OF DEATH FOR BOTH THE POLICE AND THE OCCUPANTS OF 6221 OSAGE AVE.

- The members of the Bomb Disposal Unit were not experienced, trained or proficient in the tactical use of explosives.
- The Police Commissioner compounded the BDU's incompetence by allowing the unit to operate without adequate command or control. The unit's commander was permitted to plan and mount the assault without oversight or accountability. Through the default of his superiors, the lieutenant assumed unrestricted discretion in selecting and employing explosives which were excessive under the circumstances.
- The Bomb Disposal Unit violated acceptable safety standards and imperiled human life by enhancing and misapplying explosives of such force that the results were completely different than those contemplated by the assault plan.
- The misuse of the explosives in the morning virtually destroyed the front of four row houses. Once the MOVE house was laid open by this blasting, tear gas could have been introduced into the house without blowing a hole in the roof.

20 EXPLOSIVES WERE USED AGAINST THE MOVE HOUSE ON THE MORNING OF MAY 13, 1985, WHICH WERE EXCESSIVE AND LIFE THREATENING.

- The pre-shaped charges detonated on the row house's interior party walls by "A" Team were misapplied, unacceptably dangerous, and caused destruction far in excess of what the police planners said they intended.
- The Bomb Disposal Unit improvised their own powerful "flashbangs" which were similar to fragmentation grenades, and were capable of causing serious injury to anyone nearby when they detonated.
- The high explosive boosters used by "B" Team were designed as highly potent explosives and are not acceptable as tactical weapons for police.
- Flashbang grenades and high explosive boosters were unsuitable for use by police positioned close to their intended targets, and put both user and target at high risk.

Commissioner Kauffman dissents from this finding.

21 AT LEAST ONE AGENT OF THE PHILADELPHIA OFFICE OF THE FBI MADE AVAILABLE TO THE PHILADELPHIA POLICE DEPARTMENT, WITHOUT PROPER RECORDATION BY EITHER AGENCY, SUBSTANTIAL QUANTITIES OF C-4, SOME OF WHICH MAY HAVE BEEN INCORPORATED IN THE EXPLOSIVE DEVICES USED ON MAY 13, 1985.

- In January, 1985, an agent of the FBI delivered nearly 38 pounds of C-4, a powerful military plastic explosive, to the Philadelphia Police bomb squad. Delivery of this amount of C-4 to any local police force without restrictions as to its use is inappropriate.

- Neither agency kept any records of the transaction. The FBI agent told the Commission that he "never had to keep any kind of records or anything" regarding C-4. Nor did the bomb squad keep any record of delivery, inventory or use of the C-4, or any other explosives under their control.

- Subsequent to May 13, 1985, at least one FBI agent deliberately withheld from his own superiors information concerning the unauthorized cache of the C-4. (This agent later said he was "in fear of losing my job" because of his delivery of the C-4.) As a result, officials of the FBI unwittingly furnished the Commission with inaccurate and untruthful accounts of that agency's involvement in events related to May 13, 1985. Because of the absence of record keeping by the FBI and the Philadelphia Police Department, all the facts of the use of C-4 on May 13th may never be known.

22 THE MAYOR ABDICATED HIS RESPONSIBILITIES AS A LEADER WHEN, AFTER MID-DAY, HE PERMITTED A CLEARLY FAILED OPERATION TO CONTINUE WHICH POSED GREAT RISK TO LIFE AND PROPERTY.

- By 1 P.M., the Police Commissioner and the Managing Director, the Mayor's commanders in the field, knew that neither water, gas, smoke, gunfire nor explosives would force the evacuation of 6221 Osage Ave. Yet, the Managing Director and the Police Commissioner clung to the goal of forcing the people out of the house.

- No one had requested or devised any contingency plan.

- By 4 P.M., the only direction which the Mayor appears to have provided was revealed in an afternoon press conference when he said he was prepared "to seize control of the house . . . by any means necessary."

23 ON MAY 13TH, THE KEY DECISION MAKERS WERE PREVENTED FROM EASILY AND DIRECTLY CONTACTING EACH OTHER BECAUSE OF AN INADEQUATE COMMUNICATIONS SYSTEM.

- The key officials at the scene could only contact each other by relaying messages along police and fire radio networks which were incompatible with one another.

- The Police Commissioner and Fire Commissioner could be contacted only over short-range frequencies which were not accessible to the Managing Director.

- The Mayor, at City Hall, could not directly reach any of his top officials person-to-person at the scene by radio or telephone. The Mayor could only reach the Managing Director, his top representative, by radio relays or a beeper system. Delays of several minutes were common in making contact.

- The Mayor testified that at times the only information he could get from the scene came from television new reports.

- 24 THE PLAN TO BOMB THE MOVE HOUSE WAS RECKLESS, ILL-CONCEIVED AND HASTILY APPROVED. DROPPING A BOMB ON AN OCCUPIED ROW HOUSE WAS UNCONSCIONABLE AND SHOULD HAVE BEEN REJECTED OUT-OF-HAND BY THE MAYOR, THE MANAGING DIRECTOR, THE POLICE COMMISSIONER AND THE FIRE COMMISSIONER.**
- The only credible reason offered for dropping the bomb was to destroy the bunker.
 - The Mayor, the Managing Director, the Police Commissioner and the Fire Commissioner accepted the suggestion of an aerial attack on a Philadelphia row house known by each of them to be occupied by a large number of adults and children. By approving the bombing, each of these individuals exhibited a reckless disregard for life and property.
 - The absence of a final warning to surrender coupled with a lack of knowledge of where the children were located in the house, underscores the recklessness of this act.
 - The preparation and execution of the bomb attack was entrusted to the same lieutenant whose incompetence had contributed to the miscarriage of the original plan. The plan to attack from the air was doomed to fail, as well, because neither the explosives used nor the method of delivery was capable of destroying the bunker.
 - The Managing Director told the Mayor, in a conversation overheard by two other people, that the police would drop the explosives from a helicopter.
 - The Mayor was aware of reports of gasoline being stored on the roof and of reports of explosives being stored in the MOVE house.
 - Although the Mayor conceded that there existed no compelling reason to conclude the confrontation that day, he nevertheless approved a course of action which posed extreme risk to citizens, police and firefighters.
 - The Mayor paused only 30 seconds before approving the dropping of explosives. Had he taken more time before making such a critical decision, he may have considered the presence of the children, the possibility that gas was on the roof, and the possibility that explosives were stored in the MOVE house.
- 25 THE FIRE WHICH DESTROYED THE OSAGE NEIGHBORHOOD WAS CAUSED BY THE BOMB WHICH EXPLODED ON THE ROOF OF THE MOVE HOUSE. THE FIRE BEGAN A MILLISECOND AFTER THE BOMB BLAST WHEN FRICTION-HEATED METAL FRAGMENTS PENETRATED A GAS CAN ON THE ROOF AND IGNITED GASOLINE VAPORS.**
- The bomb, an improvised combination of Tovex and C-4, was dropped in an uncontrolled manner from a helicopter at 5:27 P.M., and detonated 45 seconds later.
 - According to the Commission's explosives expert, the bomb contained substantially more C-4 than was reported by the officer who constructed it. As a result, the bomb's ability to fragment wood, brick and metal present at the point of detonation was greatly enhanced.
 - The high-energy mix of Tovex and C-4 generated blast temperatures up to 7200 degrees which, according to expert testimony, were hot enough to evaporate water and ignite a fire even if flammable liquids had not been present on the roof.
- 26 EVEN AFTER THE BOMB EXPLODED AND IGNITED THE FIRE, LIFE AND PROPERTY COULD HAVE BEEN SAVED WITHOUT ENDANGERING ANY OF THE POLICE OFFICERS OR FIREFIGHTERS BY USING THE "SQURTS" TO EXTINGUISH THE FIRE ON THE ROOF WHILE THE FIRE WAS IN ITS INCIPIENT STAGE.**
- Two Fire Department "Sqrts" — high pressure water guns mounted atop movable booms — were positioned on Pine Street, the street paralleling Osage Avenue. Each "Sqrt" could pump up to 1,000 gallons of water a minute over the Pine Street houses onto the MOVE rooftop. Throughout the day, the "Sqrts" were used to provide cover for police operations and to neutralize the effects of possible gunfire from the bunker. From 5:20 to 5:25 P.M. the "Sqrts" were turned on to protect the helicopter which was preparing to drop the bomb.
 - After the bomb detonated at 5:27 P.M., until shortly after 6:00 P.M., the fire on the roof was in its incipient stage, i.e., it was just beginning to appear and was considered small by firefighter criteria, and was not spreading beyond or below the roof's surface. It was still possible to save both the building and its occupants.
 - At any time until shortly after 6:00 P.M., the Fire Department "Sqrts" could have extinguished the fire without exposing police or firefighters to any possible danger.

- 27 THE HASTY, RECKLESS AND IRRESPONSIBLE DECISION BY THE POLICE COMMISSIONER AND THE FIRE COMMISSIONER TO USE THE FIRE AS A TACTICAL WEAPON WAS UNCONSCIONABLE.**
- The decision made by the Police Commissioner and the Fire Commissioner between 6:08 and 6:12 P.M. to let the fire burn constituted the use of fire as a tactical weapon.
 - The Fire Commissioner advised the Police Commissioner that firefighters could let the bunker burn and still contain the fire at a later time. Even if this were true, the decision to let the fire burn was reckless and irresponsible.
 - Allowing the fire to burn should have been rejected out-of-hand. That it was not rejected cannot be justified under any circumstances.
- 28 POLICE GUNFIRE PREVENTED SOME OCCUPANTS OF 6221 OSAGE AVE. FROM ESCAPING FROM THE BURNING HOUSE TO THE REAR ALLEY.***
- At least two adults and four children attempted to escape the house after it caught fire.
 - First, a man and a boy tried to exit, but returned to the house as a result of police gunfire.
 - Next, a woman, three other children and the same man fled the house. At one point all were completely free of the building. Only the woman and one child survived. The bodies of the others were found later in rubble within the foundation line of the house.
 - The majority of police officers who were positioned within the alley, at either end of the alley, or overlooking the alley's interior, said they heard gunfire in the alley between 7:00 and 7:30 P.M.
 - But these officers denied firing their weapons during this period. However, fire personnel and other police, including an Inspector, who were outside the alley on the Osage Avenue perimeter, said they heard .22 caliber fire, as well as one or two bursts of either automatic or semi-automatic fire of a heavier caliber.
 - In this same period, several officers with a view of the rear of 6221 Osage Ave. observed a man emerge from the building clutching a child and carrying a .22 caliber rifle. Three officers testified they saw this man fire the rifle in the direction of police officers.
 - Those police in a position to shoot said no police returned the man's fire.
 - Police observed the man climb a fence in the alleyway, and then "he fell back down," and was lost to view. One officer said he saw the child crawling back toward the MOVE house.
- 29 FIVE CHILDREN WERE KILLED DURING THE CONFRONTATION ON MAY 13, 1985. THEIR DEATHS APPEAR TO BE UNJUSTIFIED HOMICIDES WHICH SHOULD BE INVESTIGATED BY A GRAND JURY.**
- The deaths of the five children were caused by one or more of a variety of injuries sustained during the May 13, 1985, confrontation.
 - These deaths could have been caused by carbon monoxide poisoning, burns, effects of explosions and wounds from firearms ammunition.
 - The body of one child found in the basement contained metal fragments which the FBI laboratory and the Commission's pathology expert said were consistent with 00 buckshot pellets.
- 30 SIX ADULTS ALSO DIED AS A RESULT OF THE MAY 13TH CONFRONTATION.**
- Frank James Africa, Theresa Brooks Africa and Conrad Hampton Africa, all of whom died as a result of the confrontation, had arrest warrants outstanding against them. This fact was announced to them by the Police Commissioner in the morning and they had a legal obligation to surrender to the police at that time.
 - Ramona Johnson Africa, who escaped from the MOVE residence, was also named in an arrest warrant and had a legal obligation to surrender to the police.
 - The remaining three adults, Raymond Foster Africa, Rhonda Ward Africa and Vincent Leaphart (a/k/a John Africa), for whom there were no warrants, also died as a result of the confrontation.
 - The Police Commissioner did not announce that he had a search warrant for the 6221 Osage Ave. residence.
 - Two of the adult bodies contained metal fragments which the FBI laboratory and the Commission's pathology expert said were consistent with buckshot pellets or the cores of jacketed or semi-jacketed bullets.
 - Three other adult bodies contained other types of metal fragments thrust into them by explosions set off during the encounter.

Commissioner Kauffman dissents from this finding.

31 THE PERFORMANCE OF THE MEDICAL EXAMINER'S OFFICE WAS UNPROFESSIONAL AND VIOLATED GENERALLY ACCEPTED PRACTICES FOR PATHOLOGISTS.

- After the fire, representatives of the Medical Examiner's Office on Osage Avenue violated standard procedures for body recovery and identification and the gathering of evidence at a disaster scene:
 - ✓ Though it was obvious that bodies were in the rubble of 6221 Osage Ave., the Medical Examiner refused to be present until after the first body was discovered.
 - ✓ Even after going to Osage Avenue, the pathologists in charge of the investigation failed to coordinate and control the actions of the various agencies which simultaneously were engaged in their own searches for evidence and victims.
 - ✓ The pathologists did not follow a systematic procedure for uncovering and recording the position of each body. For example, locator stakes were not placed where each body was found; bodies were not numbered or tagged at the scene; no sequential photographic or descriptive record was made of the recovery process. As a result, there was no proper control or custody of the physical remains.
- The procedures used, including allowing a crane with a bucket to dig up debris and bodies, resulted in dismemberment, commingling of body parts, and the destruction of important physical and medical evidence.
- In the laboratory, the pathologists from the Medical Examiner's Office violated generally accepted practices in the storage, examination and analysis of bodies:
 - ✓ The facility itself was unclean, and not conducive to disciplined, scientific examination.
 - ✓ Animals bones were mixed with human remains.
 - ✓ The bodies were improperly stored at a temperature of 56 degrees, causing accelerated deterioration and the growth of fungus and mold. Recommended storage temperature is 34 to 36 degrees.
 - ✓ Tissue samples for toxicology tests were not taken until long after the fire, rendering them practically useless in determining the cause of death in most of the cases.
 - ✓ The pathologists did not take lateral x-rays of the remains, although the equipment and expertise to do so was present. As a result, the pathologists failed to discover metallic fragments, including firearms ammunition, in six of the bodies.
- The Medical Examiner's Office failed to identify five bodies, and incorrectly stated the number of dead adults and children.

RECOMMENDATIONS

These recommendations are grouped in six categories:

- A) — Operation of City Government
- B) — Operation of the Police Department
- C) — Police and Fire Department Coordination
- D) — Local Government Response to Crisis Situations
- E) — Laws and Regulations
- F) — Disciplinary Action and Further Investigation

A) — OPERATION OF CITY GOVERNMENT

- 1 **Need for Strategic Planning Process:** In anticipation of possible crisis situations, such as MOVE's apparent preparation for a violent confrontation, the Mayor should institute a strategic planning process involving all relevant city agencies. A single high ranking official, reporting directly to the Mayor, should have responsibility for initiating and monitoring strategic planning and adapting it to various threatening situations. The strategic plan should seek in every way to avoid violence and should include guidelines for any tactical or operational plan which may be prepared in response to a threatening, violent incident. *(See also Recommendation 24.)*
- 2 **Departmental Participation in Strategic Planning and Policy Determination:** Members of the Mayor's cabinet and commissioners of city departments should participate actively in major policy deliberations and in strategic planning. This participation should be encouraged through regular scheduling of meetings, advance distribution of agenda, preparation of post-discussion policy papers and other devices.
- 3 **Information Collection and Analysis:** The City should promptly establish an integrated system for the collection, analysis and appropriate dissemination of relevant information relating to crises which affect public health, safety and welfare. The City Solicitor should have an advisory role in such a system to ensure that civil liberties and rights are respected. Interdepartmental communication should be strengthened to improve operational coordination.
- 4 **Oversight of Police Department:** The Mayor, as the city's chief law enforcement officer, and the Managing Director, as his deputy, must provide closer scrutiny of the Police Department. Particularly in police operations requiring major involvement of other city departments, the Mayor must act to ensure compliance with the Mayor's objectives and necessary interdepartmental coordination. A top staff aide of the Mayor should be assigned as full-time liaison with the Police Department.
- 5 **Counsel for Police and Fire Departments:** Both the Police and Fire Department require increased legal assistance to guide their operations and their interactions with the public. The Police Department should be assigned legal counsel on a full time basis. Similar legal assistance, at least on a part time basis, should also be made available to the Fire Department.
- 6 **Public Information:** The City should develop a program to ensure timely release to the media and the public of accurate information on the city's response during major incidents.
- 7 **Possible Charter Revision:** Careful consideration should be given to revision of the City Charter, now 35 years old, directing particular attention to the role of the Managing Director and the practicality of the ten department span of control now mandated by the charter. The reporting relationships of the public safety (Police and Fire) departments should also be carefully evaluated.
- 8 **Medical Examiner's Office:** The Commissioner of Health should undertake an immediate review of the Medical Examiner's Office to determine what steps should be taken to enhance the professionalism of the office and to bring its administration and operation into accord with generally accepted practices for pathologists.

B) — OPERATION OF THE POLICE DEPARTMENT

- 9 **Public Safety Board:** Careful consideration should be given to the appointment by the Mayor of a Public Safety Board composed of city officials, including the Mayor, Managing Director or appropriate Deputy Mayor, President of City Council, City Solicitor, District Attorney and perhaps

- one or two additional high ranking city officials without direct public safety responsibilities. Such a board could regularly review key policies of the Police and Fire Departments and of other departments with ancillary public safety responsibilities, directing particular attention to tactical plans for crisis situations and the balancing of public safety and civil liberty considerations.
- 10 **Comprehensive Review of the Police Department:** The appointment of a new Police Commissioner provides a timely opportunity for a comprehensive review, utilizing outside experts, of the overall operations of the Philadelphia Police Department, with particular reference to coordination with other city departments, command structure, training, specialized units such as the "bomb squad," professional relationships with other governmental public safety agencies, and relationships with the public.
 - 11 **Discretionary Appointments:** The Police Commissioner should be permitted to appoint six to ten ranking officers without reference to Civil Service or residency requirements. Officers so appointed should, however, be required to conform to the existing city requirement that they become Philadelphia residents within six months of their appointment.
 - 12 **Review of Commissioners' Salaries:** The current salary levels of the Police Commissioner, Fire Commissioner and of other commissioners and members of the Mayor's cabinet, should be reviewed to determine whether they are commensurate with the responsibilities and competitive with salaries paid by other major cities.
 - 13 **Police Intelligence:** Correlated with the city's overall strategy (see Recommendation #1), the Police Department should develop procedures to collect, analyze and disseminate to appropriate city officials, (except where prohibited by law) intelligence and information covertly obtained relative to threatened crisis incidents. The City Solicitor should have, with respect to this activity, the same oversight responsibility outlined in Recommendation #3 to ensure that civil liberties are fully respected in connection with all information or intelligence collection activity.
 - 14 **Specialized Training:** Energetic and continuing efforts should be mounted to improve the training, particularly specialized technical and sensitivity training, provided officers of the Police Department. Training, on an initial and periodic refresher basis, should be required for police officers who may be engaged in crisis incidents including those requiring specialized knowledge of firearms, intelligence gathering techniques, cultist or terrorist behavior and psychology, barricade or hostage situations. Such training should utilize not only departmental capabilities but the resources, where available, of the FBI and other appropriate governmental agencies.
 - 15 **Weapons Control:** The Police Department should develop, document and maintain policies and procedures for the selection, use and assignment to police officers of weapons and ammunition in crisis situations. These policies and procedures should provide explicit controls for use of any unusual police weaponry, for example .50 caliber rifles, and should annually be submitted to the Mayor for his review and approval.
 - 16 **Use of Explosives:** The Police Department should develop, for approval by the Mayor, a comprehensive policy statement outlining the limited circumstances under which use of explosives would be considered. This statement should prohibit offensive use of explosives except in extraordinary circumstances and unless expressly approved in writing by the Mayor based on a written Police Department recommendation.
 - 17 **Post Incident Accountability:** Complementing Recommendation #15, the Police Department should develop policies and procedures for post-incident audit of use of firearms and of ammunition.
 - 18 **Explosives Control:** Procedures should be formulated for establishing and maintaining, under high level Police Department supervision, a detailed register of purchase, storage, use and disposition of explosives by type. These procedures should prohibit informal and unauthorized acquisition of explosives and should be enforced through regular and unannounced inspections.
 - 19 **Expert Resources on Explosives:** The Police Department should maintain a list of agencies and individuals knowledgeable in the use of explosives to permit ready access to expert views in case of need.
 - 20 **Assignment of Minority Officers:** Since crisis incidents may involve minorities, the Police Department should ensure appropriate assignment of minority police officers to the Department's specialized units and their presence at the scene of incidents.

C) — POLICE AND FIRE DEPARTMENT COORDINATION

- 21 Interdepartmental Coordinating Group:** The Mayor, in consultation with the Police and Fire Commissioners, should consider forming an interdepartmental group to review and coordinate the two departments' tactical plans for responding to emergency or crisis incidents which might involve both departments.
- 22 Fire Hazards:** The Fire Department should review and, as necessary, improve its intelligence capabilities to ensure it is fully informed regarding the possibility of fire developing during a crisis situation. All such intelligence should be promptly communicated to the Police Department. Further, the Fire Department should position itself to respond expertly and instantly to any public request regarding existence of possible fire hazards in properties in which the police are considering the use of explosives or other unusual offensive tactics.
- 23 Communications:** As part of an improved government-wide communications capability (see Recommendation #26), the Police and Fire Departments should ensure that they have the ability to communicate, at appropriate command levels, during a crisis.

D) — LOCAL GOVERNMENT RESPONSE TO CRISIS SITUATIONS

- 24 Police Tactical Planning:** Within the framework of the city's crisis intervention strategy (see Recommendations #1 and #2), the Police Department should prepare tactical plans for application in crisis incidents. Such tactical plans dealing, for example, with hostage or barricade situations, should be formulated through police command channels, should be documented in writing and should be regularly reviewed and updated. All tactical plans should include contingency options. The Mayor should assure himself both with respect to tactical and strategic plans that all means of avoiding use of force have been considered.
- 25 Consultation with Other Experts:** In preparing and monitoring its tactical plans, the Police Department should utilize fully the capabilities and experience of other police departments, federal and state agencies and non-governmental experts.
- 26 Communications Network:** The City should promptly establish a "fail safe" communications system to link key officials at the site of an incident with a nearby command post or posts and with appropriate city officials, including the Mayor, at their City Hall or other offices.
- 27 Fire Commissioner Responsibility:** The Fire Commissioner should be made to understand clearly that it is his and his department's responsibility to fight promptly and extinguish all fires where this can be done without unduly endangering the lives of firefighters. The Mayor should explicitly instruct the Fire Commissioner that no circumstances exist which justify permitting a fire to burn where it can be fought without undue danger to firefighters.
- 28 Expert Panel:** The City should maintain and periodically update a list of experts who could be consulted on short notice in situations involving hostages, cult groups, terrorist organizations, threatened use of explosives or other crisis situations. Appropriate city officials should maintain contact with these experts to insure their ready availability in time of need.
- 29 Command Responsibility:** In any crisis situation, the Mayor should clearly assign to one ranking official responsibility for direction of the entire operation.

E) — LAWS AND REGULATIONS

- 30 City Solicitor and Court Orders:** The City Solicitor should promptly seek court orders for appropriate relief, when necessary, to respond to a violation of a statute, or ordinance or regulation presenting risk to the health and safety of any citizen.
- 31 Determination of Legal Basis:** The City Solicitor in consultation with the Mayor, and other city officials as directed by the Mayor, should develop the legal basis of handling crisis situations so that further legal and operating steps can be taken promptly and on a consistent basis.
- 32 Protection of Children:** The relevant statutes should be amended to require the Department of Health and Human Services, with the assistance of the Police Department, to take into custody any children imminently threatened by a pending police action. The laws should direct the return of the child to his or her natural situation within a reasonable period, unless this clearly presents a danger to the child's safety.

- 33 **Streamlining of Administrative Response to Crisis Situations:** The building and zoning codes, health, truancy, and similar regulations should be carefully reviewed and modified, as appropriate, to permit, through use of citations and court powers, effective enforcement without endangering City personnel. For example, provisions should be framed to prevent carrying into a structure materials which clearly will be used to create or aggravate an illegal condition, such as modification of a building without appropriate license.

F) — DISCIPLINARY ACTION AND FURTHER INVESTIGATION

- 34 **Internal Investigations:** Internal investigations by the police and other departments, which were started and then suspended, should now be promptly resumed. These investigations should focus not only on the occurrences of May 13, 1985, but on events commencing January 1, 1984, leading to this incident and on events during the weeks immediately thereafter. These investigations should be directed at diagnosing operational shortcomings, instituting corrective actions, assessing individual responsibility and initiating appropriate disciplinary action through standing procedures.
- 35 **Task Force Review:** Those city departments which played a role in the MOVE crisis and which had not already started an investigation should undertake an evaluation of the respective department's planning or lack of planning and action or inaction related to the May 13, 1985, incident. Again, the objective should be to evaluate operations, determine shortcomings and initiate corrective action.
- 36 **Assessment and Coordination of Reviews:** The reports of the various investigations and reviews covered in the two preceding recommendations should be forwarded to the Managing Director for correlation and review prior to submittal to the Mayor for his analysis and as a basis for personnel actions, organizational restructuring or other actions, as the Chief Executive Officer deems appropriate.
- 37 **Police Officers and the Fifth Amendment:** The Mayor and the Police Commissioner directed all police officers to cooperate with the Philadelphia Special Investigation Commission by providing testimony concerning the performance of their assigned duties in connection with the May 13th incident. Public officials, including police officers, have a responsibility to describe the performance of their official duties when so ordered by their superiors. Failure to comply should be subject to discipline. If appropriate disciplinary proceedings find that adequate basis exists, the few police officers who refused to testify before the Commission and represented that they would invoke their Fifth Amendment privileges should be dismissed.
- 38 **Law Enforcement Investigations:** The ongoing investigations of the District Attorney and of the United States Department of Justice should proceed and should include the taking of testimony. Immunity should be used as appropriate to resolve any open factual questions, such as the full facts in the choosing, constructing, and using a bomb, and the full facts as to the nighttime events in the alley behind 6221 Osage Ave. The taking of testimony is also necessary to resolve any issues that may arise as to possible perjurious testimony before the Commission and before any grand jury. The Commission's files will be fully available to law enforcement investigators.

ADDITIONAL COMMENTS

The Commission feels obligated to make two further comments which do not conform to the factual standards which the Commission has applied in framing its findings and conclusions and in developing its set of recommendations.

Despite the progress which has been made in recent decades toward achieving greater equality, the sad fact exists that racial and other prejudices remain in our society.

Black and white leadership accordingly must recognize that the decision-making process, both public and private, may consciously or unconsciously be influenced by race, socioeconomic conditions and the lack of political power. Such recognition dictates particular sensitivity, caution and patience in analyzing and developing appropriate responses to crisis situations.

In this context, the Commission concludes that this city's administration failed to approach the Osage Avenue situation with sensitivity and care.

The Commission believes that the decisions of various city officials to permit construction of the bunker, to allow the use of high explosives and, in a 90-minute period, the firing of at least 10,000 rounds of ammunition at the house, to sanction the dropping of a bomb on an occupied row house, and to let a fire burn in a row house occupied by children, would not likely have been made had the MOVE house and its occupants been situated in a comparable white neighborhood.*

Finally, in our democratic form of government, it is the voters who have the unique responsibility of choosing those who shall govern. The elected officials, in turn, select the key administrators to assist in the operations of government.

The Commission considered at length whether it should make recommendations relative to the retention or termination of elected or appointed senior city officials who had grave responsibilities before and during the May 13, 1985, incident. The Commission has attempted in this Report to state its findings fairly and fully. After thoughtful discussion, the Commission concluded that the Report speaks for itself.

**Commissioner Kauffman dissents from this comment.*